

1 Timothy Carl Aires, Esq. (138169)
AIRES LAW FIRM
2 180 Newport Center Drive, Suite 260
Newport Beach, California 92660
3 (949) 718-2020
(949) 718-2021 FAX

4 Attorneys for Plaintiff and Counterdefendant,
5 AT&T CORP.

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

10
11 AT&T CORP.,

12 Plaintiff,

13 v.

14 DATAWAY INC. dba DATAWAY
DESIGNS,

15 Defendants.

16
17 AND RELATED COUNTERCLAIM.
18

) Case No. C07-02440 EDL

) EVIDENTIARY OBJECTIONS OF
) PLAINTIFF AND COUNTER-
) DEFENDANT AT&T CORP. TO
) SUPPLEMENTAL DECLARATION OF
) ANNE-LEITH MATLOCK (FILED
) JULY 21, 2008) OFFERED BY
) DEFENDANT AND
) COUNTERCLAIMANT DATAWAY
) INC. dba DATAWAY DESIGNS IN
) SUPPORT OF ITS OPPOSITION TO
) MOTION FOR SUMMARY
) JUDGMENT

[F.R.C.P., Rule 56]

19 DATE: August 12, 2008
20 TIME: 9:30 a.m.
21 CTRM: E, 15th Floor

22 Plaintiff and Counterdefendant AT&T Corp., by and through its counsel of record,
23 hereby submits its *Evidentiary Objections to Supplemental Declaration of Anne-Leith*
24 *Matlock (Filed July 21, 2008) Offered by Defendant and Counterclaimant Dataway Inc. dba*
25 *Dataway Designs in Support of its Opposition to Motion for Summary Judgment*, as follows:
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EVIDENTIARY OBJECTIONS

SUPPLEMENTAL DECLARATION OF ANNE-LEITH MATLOCK FILED JULY 21, 2008:

p. 2:6-8, ¶2: “On July 1, 2008 AT&T filed its Motion for Summary Judgment. On July 15, 2008 Dataway filed its Opposition to AT&T's motion requesting that AT&T's motion shall be denied but that Summary Judgment in favor of Dataway is proper.”

Objection: Irrelevant [Federal Rules of Evidence, Rules 402].

p. 2:9-10, ¶3: “Both parties refer to the Depositions of Simon Lewis and Francisco Molieri, officers of Dataway, which constitute evidence satisfying the standard of F.R.C.P. 56.”

Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295 (interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir. 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties); Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).]

p. 2:11-3:2, ¶4: “In particular Dataway's references are to the Deposition of Simon Lewis, pages: a. 5 (1. 18-20) and 45 (1. 13-25): calls were epidemic; b. 6 (1. 3-5 and 18-19) and 27 (1. 5-17): AT&T employees knew that Dataway did not execute calls and that charges should be waived; c. 10 (6-11), 43 (p.21 – p.44 1. 14): calls were fraudulent, executed by hackers, used and created unauthorized Legacy T account; d. 11 (1.9-13): calls were executed from remote location in Kansas; e. 11 (1.16 - p.12 1.3): does not know how calls were executed, which tariff was used and did not authorize them; f. 16 (1.16-20) and 25 (14-18):

1 Dataway did not become indebted to AT&T, did not receive services and was not reasonable
 2 value; g. 29 (1.23- p.30 1.15) and 38 (1.2-9): Despite AT&T's promise, AT&T sent Notice
 3 of Disconnect; h. 30 (1.16-21) and 46(1.4-12): Dataway denies charges; i. 32 (1.10-p.33 1.4),
 4 34 (1.8-22) and 40 (1.9-19): consolidated its long- distance telecommunication with SBC,
 5 Legacy S; j. 36: Dataway maintained security means; k. 42 (1.9-22): AT&T breached its oral
 6 contract; l. 45 (1. 13-25): was hacking typical call and not a regular connection, and m. 20
 7 (damages).”

8 Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation
 9 [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule
 10 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295
 11 (interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th
 12 Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir.
 13 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties);
 14 Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).]

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 16 p. 3:5-16, ¶5: “Moreover, the Dataway's Opposition to AT&T's Motion for Summary
 17 Judgment refers to the Transcript of the Deposition of Francisco Molieri, pages: a. 7 (1. 1
 18 8-22): calls were fraudulent, executed by hackers, used and created unauthorized Legacy T
 19 account; b. 8 (1.2-7): hackers compromised voicemail and executed calls to the Philippines
 20 using Legacy T); c. 12 (1.15 to p.15 1. 22): Dataway's security means; d. 13 (1. 1-7): AT&T
 21 promised to waive charges once Dataway formally disputed them; e. 17 (1.7-9): don't know
 22 how calls were executed and which tariff was used; f. 18 (1.12-23) and 59 (1.18 et.seq.):
 23 hacker compromised voicemail system, executed calls from a remote location, but no
 24 knowledge of used service; g. 58 (1. 19 - p.59 1.2: calls were epidemic; h. 59 (1. 3-5): AT&T
 25 breached oral promise and sent Notice of Disconnect;”

26 Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation
 27 [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule
 28 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295

(interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir. 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties); Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).]

p. 3:17-19, ¶6: "Due to the large number of transcript pages, only the pertinent pages are attached as Exhibits. However, Dataway is prepared to submit a full copy of the deposition transcripts at the Court's request."

Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295 (interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir. 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties); Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).]

p. 3:20-21, ¶7: "A copy of the pertinent pages of the Transcript of the Deposition of Simon Lewis is attached hereto as Exhibit A."

Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295 (interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir. 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties); Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).]

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1 p. 3:22-23, ¶8: "A copy of the pertinent pages of the Transcript of the Deposition of
2 Francisco Molieri is attached as Exhibit B."

3 Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation
4 [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule
5 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295
6 (interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th
7 Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir.
8 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties);
9 Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).]
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11 p. 3:24, ¶9: "A copy of the pertinent Bate Stamped documents is attached as Exhibit
12 C."

13 Objection: Irrelevant [Federal Rules of Evidence, Rules 402]; Lacks foundation
14 [Federal Rules of Evidence, Rules 601 and 602]; Hearsay [Federal Rules of Evidence, Rule
15 802]; Legal conclusion [Smith v. Wal-Mart Stores, Inc. (6th Cir. 1999) 167 F.3d 286, 295
16 (interpretation of city and state building codes); McHugh v. United Service Auto. Ass'n (9th
17 Cir. 1999) 164 F.3d 451, 454 (interpretation of insurance policy); Askanase v. Fatjo (5th Cir.
18 1997) 130 F.3d 657, 673 (whether corporation's directors breached fiduciary duties);
19 Snap-Drape, Inc. v. C.I.R. (5th Cir. 1996) 98 F.3d 194, 198 (interpretation of Tax Code).
20

21 DATED: July 30, 2008

AIRES LAW FIRM

22
23 By. 

24 Timothy Carl Aires, Esq.
25 Attorney for Plaintiff and Counterdefendant,
26 AT&T CORP.
27
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Timothy Carl Aires, am employed in the aforesaid county, State of California; I am over the age of eighteen years and not a party to the within action; my business address is: 180 Newport Center Drive, Suite 260, Newport Beach, California 92660.

On July 30, 2008, I served the document entitled: *Evidentiary Objections of Plaintiff and Counter-defendant AT&T Corp. To Supplemental Declaration of Anne-Leith Matlock (Filed July 21, 2008) Offered by Defendant and Counterclaimant Dataway Inc. dba Dataway Designs in Support of its Opposition to Motion for Summary Judgment* on all interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, addressed as follows:

Anne Leith-Matlock, Esq. (anne-leith@matlocklawgroup.com)
Matlock Law Group, PC
1485 Treat Boulevard, Suite 200
Walnut Creek, CA 94597

(check applicable paragraphs)

☒ (BY MAIL IN THE ORDINARY COURSE OF BUSINESS) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the U.S. Postal Service and the fact that correspondence would be deposited with the U.S. Postal Service that same day in the ordinary course of business; On this date, the above-named correspondence was placed for deposit at Newport Beach, CA and placed for collection and mailing following ordinary business practices.

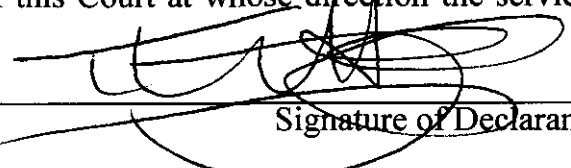
☐ (BY PERSONAL SERVICE) I caused such document to be served by hand on the addressee.

☐ (BY EXPRESS SERVICE) I caused such document to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

☐ (State) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (Federal) I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 30, 2008


Signature of Declarant